

**DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 16-17**

**APPLICANT**

**Michael Beals**

**LOCATION OF PROPERTY INVOLVED**

**106 Pemberton Street  
Walpole Assessors Map 25, Parcel 107**

**APPLICATION**

A Special Permit under Section 9-4.A. of the Zoning Bylaw to allow the extension of an existing nonconforming building in both setback and height at 106 Pemberton Street, Walpole, MA 02081.

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On July 26, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zuker, Chairman  
James DeCelle, Vice Chairman  
Craig Hiltz, Clerk  
Susanne Murphy, Member  
Mary Jane Coffey, Member

**VOTE OF THE BOARD**

A motion was made by Mr. Hiltz and seconded by Mr. DeCelle to grant the Special Permit under Section 9-4.A of the Zoning Bylaw to allow the extension of an existing nonconforming building in both setback and height at 106 Pemberton Street, Walpole, MA 02081.

The vote was 5-0-0 in favor (Zuker, Hiltz, DeCelle, Murphy, Coffey voting); therefore, the Special Permit under Section 9-4.A is hereby granted subject to the following conditions:

1. The extension shall be constructed as shown on the plan submitted at the public hearing on June 26, 2017, and in no case greater than the maximum height requirement of the Bylaw zone.
2. There shall be no other relief granted.

**REASONS FOR DECISION**

It is the finding of the Board that the Applicant was able to meet the requirements of Section 9-4.A to allow the requested extension of an existing nonconforming building in both setback and height at 106 Pemberton Street, Walpole, MA 02081. The Board finds that the extension is in

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TOWN CLERK

character with and follows the intent of the Residence RB District, along with having support from neighboring abutters and determining that the extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Accordingly, the Board has determined that the Special Permit requested is warranted.

## **FURTHER FINDINGS**

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

**(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:**

**(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;**

For the reasons that follow, the Board finds that the addition of a second floor to a preexisting nonconforming with respect to side yard setback one story residential building will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Accordingly, the Board finds the conditions of section 9-4.A are satisfied.

**(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The Board finds that the second story extension will be used by the existing single family and therefore will not change the number or type of vehicular and pedestrian traffic so as to adversely affect the neighborhood. As such, this criterion is satisfied.

**(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

The Board finds that the proposed extension should not be an adverse effect to the neighborhood. The proposed undertaking is specifically intended to allow the Applicant and his family to remain in their home with added second story space to accommodate their needs. The extension is not designed to substantially increase the number of residents. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

**(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds that as shown on the plans submitted with the Application, the proposed extension is no closer to the side yard setback which is currently nonconforming and the extension of this nonconformity will also extend the nonconformity under Section 6-C.2. The Board finds the proposed extension conforms to the other dimensional requirements of the Zoning Bylaw, including maximum height under Section 6-B.1. The proposed extension will be located in the same location as the existing nonconforming building with added height. Therefore, the Board is satisfied that this condition is met.

**(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds that the proposed extension is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

**(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;**

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

**(g) shall not adversely affect the character of the immediate neighborhood; and**

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The plans show the extension is being renovated and elevated in a tasteful manner that is consistent with the size and construction of the other single family homes in the neighborhood. The neighbor testified at the public hearing in support of the addition of a second floor. As such, the proposed extension will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

**(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.**

The Board finds that the addition of a second story to a residential building which is not more detrimental to the neighborhood is compatible with the purpose of the zoning Bylaw and the purpose of the Residential RB District. As such, this condition is satisfied.

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Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a

special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

**APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.**

WALPOLE ZONING BOARD OF APPEALS

  
Craig W. Hiltz, Clerk

CH/am

cc:      Town Clerk                      Engineering                      Planning Board  
                         Applicant  
            Board of Selectmen      Building Inspector              Conservation Commission  
                         Abutters

This decision was made on July 26, 2017 and filed with the Town Clerk on August 7, 2017.